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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 LOUIS LEPERA, an individual,

16 Plaintiff,

CASE NO.: 2:22-cv-01699-RFB-BNW

17 v.

18 UNIVERSITY MEDICAL CENTER OF  
 19 SOUTHERN NEVADA, a Political Subdivision  
 20 of Clark County,

21 Defendants.

**UNIVERSITY MEDICAL CENTER OF  
 SOUTHERN NEVADA'S ANSWER TO  
 PLAINTIFF'S FIRST AMENDED  
 COMPLAINT**

22 Defendant University Medical Center of Southern Nevada (“UMC”), by and through the  
 23 law firm of Holley Driggs, (“Defendant”), hereby responds to Plaintiff’s First Amended Complaint  
 24 as follows:

25 **PARTIES**

26 1. Answering Paragraph 1 of the Complaint, UMC is without knowledge as to the  
 27 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

28 2. Answering Paragraph 2 of the Complaint UMC admits that it is a county-owned  
 29 hospital created under NRS Chapter 450 and provides medical services to patients in Clark County,  
 30 Nevada.

31 3. Answering Paragraph 3 of the Complaint, the Paragraph asserts a legal conclusion  
 32 to which no response is necessary. To the extent a response is necessary, UMC denies the  
 33 Paragraph.

1           4. Answering Paragraph 4 of the Complaint, the Paragraph asserts a legal conclusion  
2 to which no response is necessary. To the extent a response is necessary, UMC denies the  
3 Paragraph.

4           5. Answering Paragraph 5 of the Complaint, the Paragraph asserts a legal conclusion  
5 to which no response is necessary. To the extent a response is necessary, UMC denies the  
6 Paragraph.

7           **JURISDICTION AND VENUE**

8           6. Answering Paragraph 6 of the Complaint, the Paragraph asserts a legal conclusion  
9 to which no response is necessary. To the extent a response is necessary, UMC denies the  
10 Paragraph.

11           7. Answering Paragraph 7 of the Complaint, the Paragraph asserts a legal conclusion  
12 to which no response is necessary. To the extent a response is necessary, UMC denies the  
13 Paragraph.

14           8. Answering Paragraph 8 of the Complaint, the Paragraph asserts a legal conclusion  
15 to which no response is necessary. To the extent a response is necessary, UMC denies the  
16 Paragraph.

17           **PROCEDURAL REQUIREMENTS**

18           9. Answering Paragraph 9 of the Complaint, the Paragraph asserts a legal conclusion  
19 to which no response is necessary. To the extent a response is necessary, UMC denies the  
20 Paragraph.

21           10. Answering Paragraph 10 of the Complaint, the Paragraph asserts a legal conclusion  
22 to which no response is necessary. To the extent a response is necessary, UMC denies the  
23 Paragraph.

24           11. Answering Paragraph 11 of the Complaint, UMC is without knowledge as to the  
25 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

26           12. Answering Paragraph 12 of the Complaint, UMC is without knowledge as to the  
27 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

28           ///

## **FACTUAL ALLEGATIONS**

13. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

14. Answering Paragraph 14 of the Complaint, UMC admits the allegations contained therein.

15. Answering Paragraph 15 of the Complaint, UMC admits the allegations contained therein.

16. Answering Paragraph 16 of the Complaint, UMC denies the allegations contained therein.

17. Answering Paragraph 17 of the Complaint, UMC denies the allegations contained therein.

18. Answering Paragraph 18 of the Complaint, UMC denies the allegations contained therein.

19. Answering Paragraph 19 of the Complaint, UMC denies the allegations contained therein.

20. Answering Paragraph 20 of the Complaint, UMC denies the allegations contained therein.

21. Answering Paragraph 21 of the Complaint, UMC denies the allegations contained therein.

22. Answering Paragraph 22 of the Complaint, UMC denies the allegations contained therein.

23. Answering Paragraph 23 of the Complaint, UMC denies the allegations contained therein.

24. Answering Paragraph 24 of the Complaint, UMC denies the allegations contained therein.

25. Answering Paragraph 25 of the Complaint, UMC denies the allegations contained therein.

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1       26. Answering Paragraph 26 of the Complaint, UMC denies the allegations contained  
2 therein.

3       27. Answering Paragraph 27 of the Complaint, UMC denies the allegations contained  
4 therein.

5       28. Answering Paragraph 28 of the Complaint, UMC denies the allegations contained  
6 therein.

7       29. Answering Paragraph 29 of the Complaint, UMC denies the allegations as  
8 characterized therein.

9       30. Answering Paragraph 30 of the Complaint, UMC denies the allegations as  
10 characterized therein.

11       31. Answering Paragraph 31 of the Complaint, UMC denies the allegations as  
12 characterized therein.

13       32. Answering Paragraph 32 of the Complaint, UMC denies the allegations contained  
14 therein.

15       33. Answering Paragraph 33 of the Complaint, UMC admits the allegations contained  
16 therein.

17       34. Answering Paragraph 34 of the Complaint, UMC admits the allegations contained  
18 therein.

19       35. Answering Paragraph 35 of the Complaint, UMC is without knowledge as to the  
20 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

21       36. Answering Paragraph 36 of the Complaint, UMC denies the allegations contained  
22 therein.

23       37. Answering Paragraph 37 of the Complaint, UMC denies the allegations contained  
24 therein as characterized by Plaintiff.

25       38. Answering Paragraph 38 of the Complaint, UMC denies the allegations contained  
26 therein.

27       39. Answering Paragraph 39 of the Complaint, UMC is without knowledge as to the  
28 truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

40. Answering Paragraph 40 of the Complaint, UMC denies the allegations contained therein.

41. Answering Paragraph 41 of the Complaint, UMC denies the allegations contained therein.

**FIRST CLAIM FOR RELIEF**  
**AGE DISCRIMINATION**  
**29 U.S.C. §623 et. seq. / NRS 613.330**

42. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

43. Answering Paragraph 43 of the Complaint, UMC is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

44. Answering Paragraph 44 of the Complaint, UMC denies the allegations contained therein.

45. Answering Paragraph 45 of the Complaint, UMC denies the allegations contained therein.

46. Answering Paragraph 46 of the Complaint, UMC denies the allegations contained therein.

47. Answering Paragraph 47 of the Complaint, UMC denies the allegations contained therein.

48. Answering Paragraph 48 of the Complaint, UMC denies the allegations contained therein.

49. Answering Paragraph 49 of the Complaint, UMC denies the allegations contained

50. Answering Paragraph 50 of the Complaint, UMC denies the allegations contained

51. Answering Paragraph 51 of the Complaint, UMC denies the allegations contained

52. Answering Paragraph 52 of the Complaint, UMC denies the allegations contained

53. Answering Paragraph 53 of the Complaint, UMC denies the allegations contained therein.

**SECOND CLAIM FOR RELIEF**  
**DEFAMATION (PER SE)**

54. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

55. Answering Paragraph 55 of the Complaint, UMC is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

56. Answering Paragraph 56 of the Complaint, UMC is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained therein.

57. Answering Paragraph 57 of the Complaint, UMC denies the allegations contained therein.

58. Answering Paragraph 58 of the Complaint, UMC denies the allegations contained therein.

59. Answering Paragraph 59 of the Complaint, UMC denies the allegations contained therein.

60. Answering Paragraph 60 of the Complaint, UMC denies the allegations contained therein.

61. Answering Paragraph 61 of the Complaint, UMC denies the allegations contained therein.

62. Answering Paragraph 62 of the Complaint, UMC denies the allegations contained therein.

**THIRD CLAIM FOR RELIEF**  
**DISABILITY DISCRIMINATION**  
**42 U.S.C. §12111 *et. seq.* / NRS 613.330**

63. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

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1       64. Answering Paragraph 64 of the Complaint, the Paragraph asserts a legal conclusion  
2 to which no response is necessary. To the extent a response is necessary, UMC denies the  
3 Paragraph.

4       65. Answering Paragraph 65 of the Complaint, the Paragraph asserts a legal conclusion  
5 to which no response is necessary. Additionally, UMC is without knowledge as to the truth of the  
6 matters alleged therein, and upon said grounds, denies the allegations contained therein.

7       66. Answering Paragraph 66 of the Complaint, UMC denies the allegations contained  
8 therein.

9       67. Answering Paragraph 67 of the Complaint, UMC denies the allegations contained  
10 therein.

11       68. Answering Paragraph 68 of the Complaint, UMC denies the allegations contained  
12 therein.

13       69. Answering Paragraph 69 of the Complaint, UMC denies the allegations contained  
14 therein.

15       70. Answering Paragraph 70 of the Complaint, UMC denies the allegations contained  
16 therein.

17       71. Answering Paragraph 71 of the Complaint, UMC denies the allegations contained  
18 therein.

19       72. Answering Paragraph 72 of the Complaint, UMC denies the allegations contained  
20 therein.

21       73. Answering Paragraph 73 of the Complaint, UMC denies the allegations contained  
22 therein.

23       74. Answering Paragraph 74 of the Complaint, UMC denies the allegations contained  
24 therein.

25       75. Answering Paragraph 75 of the Complaint, UMC denies the allegations contained  
26 therein.

27       76. Answering Paragraph 76 of the Complaint, UMC denies the allegations contained  
28 therein.

**FOURTH CLAIM FOR RELIEF**  
**SEXUAL HARASSMENT/DISCRIMINATION**  
**42 U.S.C. §2000e et seq. / NRS 613.330**

77. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

78. Answering Paragraph 78 of the Complaint, UMC denies the allegations contained therein.

79. Answering Paragraph 79 of the Complaint, UMC denies the allegations contained therein.

80. Answering Paragraph 80 of the Complaint, UMC denies the allegations contained therein.

81. Answering Paragraph 81 of the Complaint, UMC denies the allegations contained therein.

82. Answering Paragraph 82 of the Complaint, UMC denies the allegations contained therein.

83. Answering Paragraph 83 of the Complaint, UMC denies the allegations contained therein.

84. Answering Paragraph 83 of the Complaint, UMC denies the allegations contained therein.

85. Answering Paragraph 85 of the Complaint, UMC denies the allegations contained

86. Answering Paragraph 86 of the Complaint, UMC denies the allegations contained

87. Answering Paragraph 87 of the Complaint, UMC denies the allegations contained

**FOURTH CLAIM FOR RELIEF**  
**RETALIATION**  
**42 U.S.C. §2000e-3(a) Title VII / NRS 613.340**

88. UMC repeats and realleges all the allegations contained in the preceding paragraphs of this Answer to Plaintiff's Complaint as though fully set forth herein.

89. Answering Paragraph 89 of the Complaint, UMC denies the allegations contained therein.

90. Answering Paragraph 90 of the Complaint, UMC denies the allegations contained therein.

91. Answering Paragraph 91 of the Complaint, UMC denies the allegations contained therein.

92. Answering Paragraph 92 of the Complaint, UMC denies the allegations contained therein.

93. Answering Paragraph 93 of the Complaint, UMC denies the allegations contained therein.

94. Answering Paragraph 94 of the Complaint, UMC denies the allegations contained therein.

95. Answering Paragraph 95 of the Complaint, UMC denies the allegations contained therein.

96. Answering Paragraph 96 of the Complaint, UMC denies the allegations contained

97. Answering Paragraph 97 of the Complaint, UMC denies the allegations contained

98. Answering Paragraph 98 of the Complaint, UMC denies the allegations contained

99. Answering Paragraph 99 of the Complaint, UMC denies the allegations contained

100. Answering Paragraph 100 of the Complaint, UMC denies the allegations contained

101. Answering Paragraph 101 of the Complaint, UMC denies the allegations contained therein.

## **AFFIRMATIVE DEFENSES**

1. UMC denies each and every allegation set forth in Plaintiff's Complaint not otherwise expressly denied herein;

2. The Complaint fails to state a claim against UMC upon which relief can be granted;

3. Plaintiff failed to exhaust all required administrative remedies prior to commencing this action;

4. Plaintiff is barred from obtaining relief against UMC for any claim by reason of the statute of limitations;

5. Plaintiff is, by his own actions, estopped from asserting any claim against UMC;

6. Plaintiff has, by his own actions, waived his right to assert any claim against UMC;

7. Plaintiff has not suffered any damages;

8. Plaintiff has not suffered any adverse employment action;

9. Plaintiff consented, in whole or in part, to any action taken by UMC;

10. Plaintiff failed to use reasonable care to avoid harm;

11. Plaintiff failed to report to UMC any prior alleged improper acts;

12. Plaintiff's damages, if any, are not attributable to any act, conduct, or omission of

UMC;

13. Plaintiff failed to take reasonable measures to mitigate his damages, if any, and is therefore barred from recovering any damages from UMC;

14. Plaintiff's damages, if any, were the result of his own conduct;

15. Plaintiff's damages, if any, were caused by an intervening and/or superseding cause:

16. Plaintiff's damages, if any, were caused by the actions or inactions of persons over whom UMC either had no control or for whom UMC is not liable or responsible:

17. Plaintiff's damages, if any, were caused by the actions or inactions of persons acting outside the scope of their employment with UMC:

1       18. Plaintiff's damages, if any, were contributed to or caused by Plaintiff's own actions  
2 or inactions or those of a third party whose negligence was greater than UMC's negligence, if any;

3       19. Plaintiff's damages, if any, are not reflected by any physical manifestation of  
4 symptoms;

5       20. Plaintiff's damages, if any, are capped by Nevada statute and/or other laws;

6       21. Plaintiff's claims may be barred by the doctrine of after-acquired evidence;

7       22. Plaintiff's claims are barred to the extent he failed to file an EEOC charge within  
8 the requisite number of applicable days of any alleged discriminatory or retaliatory conduct;

9       23. Plaintiff's claims should be dismissed to the extent they were not set forth in his  
10 administrative charge;

11       24. UMC is not a state actor as the same is understood and interpreted for purposes of  
12 the statutes referenced in Plaintiff's Complaint;

13       25. UMC at all times acted in good faith and with reasonable grounds for believing it  
14 did not violate any law;

15       26. UMC did not ratify or otherwise approve of any improper or illegal acts of any third  
16 party;

17       27. All actions complained of by Plaintiff as related to UMC were taken consistent with  
18 a business necessity and/or consistent with a bona fide occupational qualification;

19       28. All actions complained of by Plaintiff as related to UMC were taken consistent with  
20 a bona fide seniority system;

21       29. UMC took all actions based upon reasonable and legitimate business considerations  
22 other than the age of the employee;

23       30. UMC took all actions and set forth all policies reasonable and necessary to prevent  
24 any improper acts by its employees conducted within the scope of their employment;

25       31. UMC has in place a company-mandated anti-discrimination policy that is  
26 reasonably designed and reasonably effectual;

27       32. Plaintiff failed to take advantage of any preventative or corrective opportunities  
28 provided by UMC;

1       33. UMC denies having any wrongful or discriminating motivation with respect to  
2 Plaintiff, but asserts that the actions which Plaintiff complains of were taken for lawful reasons  
3 independent of any alleged wrongful motivation;

4       34. UMC did not make any false or defamatory statements concerning Plaintiff's work  
5 history;

6       35. Any statement made by UMC concerning Plaintiff's employment was true;

7       36. Any statement made by UMC concerning Plaintiff's employment history is  
8 protected by the common interest privilege;

9       37. UMC is entitled to immunity pursuant to NRS 41.032;

10       38. UMC's damages, if any, are limited by NRS 41.035;

11       39. UMC is immune from punitive damages pursuant to NRS 42.005;

12       40. UMC's damages, if any, are limited by NRS 41.141;

13       41. UMC is entitled to qualified immunity;

14       42. Plaintiff's claims against UMC are barred in whole or in part by the doctrine of  
15 unclean hands and/or laches;

16       43. Plaintiff's allegations are preempted by UMC's duties under federal and/or state  
17 law;

18       44. All actions complained of by Plaintiff do not constitute legally cognizable adverse  
19 employment actions;

20       45. It has been necessary for UMC to employ the services of an attorney to defend this  
21 Complaint, and reasonable sums should be allowed as and for attorney fees, together with costs  
22 expended in this action;

23       46. Pursuant to Rule 11 of the Federal Rules of Civil Procedure, at the time of the filing  
24 of this Answer to Plaintiff's Complaint, all possible affirmative defenses may not have been  
25 alleged inasmuch as insufficient facts and relevant information may not have been available after  
26 reasonable inquiry. Therefore, UMC reserves the right to amend this Answer to allege additional  
27 affirmative defenses if subsequent investigation so warrants. UMC incorporates by reference each  
28 and every affirmative defense set forth in Federal Rules of Civil Procedure Rule 8(c), as if fully

1 set forth herein. Such defenses are herein incorporated by reference for the specific purpose of not  
2 waiving any such defense.

3 WHEREFORE, UMC prays for relief as follows:

4 1. Dismissal of Plaintiff's First Amended Complaint with prejudice;  
5 2. An award of reasonable attorney fees and costs to UMC for the defense of this  
6 matter; and  
7 3. For such other relief as this Court deems reasonable and proper.

8 DATED this 13th day of March, 2023.

9 **HOLLEY DRIGGS**

11 /s/ F. Thomas Edwards

12 F. Thomas Edwards, Esq.  
13 Nevada Bar No. 9549  
14 John J. Pictum III, Esq.  
15 Nevada Bar No. 15979  
16 300 South Fourth Street, Suite 1600  
17 Las Vegas, Nevada 89101  
18 *Attorneys for University Medical Center*  
19 *of Southern Nevada*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically transmitted the above and foregoing  
**UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED COMPLAINT** using the CM/ECF system for filing and  
transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered  
to receive Electronic Filing.

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*Attorney for Plaintiff, Louis Lepera*

DATED this 13th day of March, 2023.

/s/ Norma S. Moseley  
An employee of HOLLEY DRIGGS